

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

JOSHUA RYAN KOENIG,

Plaintiff,

vs.

TIMOTHY MORALES,

Defendant.

CIV. NO. 20-00376 JMS-RT

FINDINGS AND
RECOMMENDATION TO DENY
PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT

FINDINGS AND RECOMMENDATION TO DENY
PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

Before this Court is Plaintiff Joshua Ryan Koenig's motion for default judgment ("Motion" or "Motion for Default Judgment"), filed on January 11, 2021. ECF No. 24. This Court elects to decide Plaintiff's Motion for Default Judgment without a hearing pursuant to Rule 7.1(c) of the Local Rules of Practice for the United States District Court for the District of Hawaii. After careful consideration of the Motion and applicable law, this Court RECOMMENDS that the district court DENY the Motion.

Plaintiff's Motion seeks default judgment against Defendant Timothy Morales. It appears that Defendant Morales has not been served. See ECF No. 22. The district court's December 22, 2020 entering order directs the U.S. Marshall to personally serve the Summons in a Civil Action and Second Amended Complaint on Defendant Morales because Defendant Morales did not return the Waiver of the Service of Summons. ECF

No. 22. The docket does not reflect that the U.S. Marshalls has completed service. As such, any default would be premature.

Further, default judgment can only be granted if entry of default against that defendant has been entered. Under Federal Rule of Civil Procedure 55(a), an entry of default judgment requires a two-step process. First an entry of default must be made, and second, Plaintiff must file a motion for entry of default judgment. Fed. R. Civ. P. 55(a). In this case, default has not been entered against Defendant Morales and thus, Plaintiff's request for default judgment is premature.

This Court therefore RECOMMENDS that the Motion be DENIED without prejudice to the filing of a motion for default judgment that meets the requirements under Fed. R. Civ. P. 55(a) and all applicable court rules.

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, January 12, 2021.



/s/ Rom A. Trader
Rom A. Trader
United States Magistrate Judge